

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1391 OF 2007

Iqbal Ahmad Ajimulla ..Petitioner

V/s.

Kini Gaus Mohd.Shaikh & Ors. ..Respondents

Mr.M.R.Yadav for the petitioner.

Mr.Y.E.Mooman for respondent no.1.

Coram : S.J.Vazifdar, J

Date : 18.07.2007.

PC

1. Rule, returnable and heard forthwith.
2. The petitioner has impugned the order dated 1.12.2006 rejecting his application for amendment.
3. The suit was filed by the petitioner for an injunction restraining the respondents from interfering with the use and occupation of the suit premises. By the amendment, the petitioner contended that after the suit was filed, he was dis-possessed illegally.
4. I do not, for a moment, suggest that the respondent's contention that his case is factually incorrect is not well founded. However, that is a matter which would finally be decided at the trial

of the suit. Today, admittedly, the petitioner is not in possession. In the circumstances, it would be convenient and proper not merely for the petitioner but even to the respondent to have the case set up in the proposed amendment to be decided in the suit itself.

5. In the circumstances, the impugned order is set aside and the petitioner's application for amendment is allowed. It is however, made clear that this order does not by any means reflect that the petitioner has made out any case on the merits of his allegation. Further, the amendment shall be without prejudice to the rights and contentions of the respondent including as to limitation. Amendment to be carried out within a period of 2 weeks from today.

. Parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.
